

Term Contract No. 405N

STATE OF NORTH CAROLINA, DEPARTMENT OF ADMINISTRATION		
DIVISION OF PURCHASE AND CONTRACT		
116 West Jones Street, Raleigh, NC 27603-8002		
Term Contract	405N	Pipeline Natural Gas (Firm and Interruptible)
Effective Dates	December 1, 2009 through November 30, 2012	
Bid Number	200900898	
Administrator	Grant Braley	
Phone	(919) 807-4550	
Fax	(919) 807-4510	
E-Mail	grant.braley@doa.nc.gov	
Last Updated	January 31, 2011	

1. Training

Training sessions will be conducted throughout the contract period as the need arises. Most of you have had experience working with Aubrey Hilliard and Chris Koch of Texican Horizon in the past contract. The webinar, "Go To Meeting" is an excellent way to train personnel on the specifics of the natural gas industry; including procedure, policies, and principles of gas purchasing as well as the interpretation and use of management reports.

2. General Information

This contract is for use by all state agencies, departments, institutions, universities, community colleges, public schools units (except those exempted by statute), and certain non-state agencies. [01NCAC 05.1101 \(b\)](#) states no agency may purchase any commodity covered by a statewide term contract from any other source. [01NCAC 05.0112](#) defines agency as all departments, institutions, boards, commissions, universities, or other administrative units, unless specifically exempted.

In accordance with North Carolina General Statutes, certain non-state entities described below, may participate in this contract on a voluntary basis. Any of the non-state entities that choose to participate in this contract must abide by the terms and conditions that are set forth in this contract.

Nonprofit corporations operating charitable hospitals, local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, private higher education institutions, counties, cities, towns, governmental entities, volunteer fire departments, rescue squads, and other subdivisions of the State and public agencies thereof.

3. Scope of Contract (Gas Marketer)

This contract is for the purchase of transport natural gas, interruptible and firm, from the marketer Texican Natural Gas Company for firm, all inclusive basis cost of \$0.5590 per dekatherm. Agencies reserve the right to revert to LDC (Local Distribution Company, also known as Local Utility Company) sales service or other sources (i.e. fuel oil) or the agencies may purchase gas volumns for more than one month (i.e. gas strips) whenever the agency deems such change to be in their best interest. The contractor is expected to advise agencies on market conditions/trends, when it is less costly to purchase natural gas from the LDC, and to assist agencies in establishing a transport relationship with the LDC. Any attempt by the contractor to represent any material and/or service not specifically awarded as being under contract with the State of North Carolina is a violation of the contract. Such action is subject to legal and contractual remedies available to the state inclusive of, but not limited to, contract cancellation, suspension and/or debarment.

In the event an agency has an existing agency specific contract and/or has executed a non-termination contract for the commodity/services defined herein prior to the effective date of this contract such contract shall not be considered to violate this contract until such contract has reached its termination date.

4. Item Pricing

The basis cost will not change throughout the first twelve (12) months of the contract.

City Gate Price = NYMEX Closing Cost + All Inclusive Basis Cost, (including e-procurement fee) \$0.99/Dt

NYMEX Cost: The last day NYMEX Settlement Price for the applicable month and/or NYMEX strip or monthly price for any futures transaction authorized by an Agency.

Basis Cost: All costs associated with the transportation of the natural gas to the LDC city gate including tariff charges, commodity transportation, capacity charges, marketer margin, shrinkage, fuel retainage losses, GRI surcharge, Gross Receipts Tax (GRT), custom duties/charges and full requirements balancing. The basis cost does not include the commodity cost (NYMEX Cost). The basis cost does include e-procurement fees under the Statewide E-Procurement Service. Presently, the e-procurement transaction fee for this contract is 1.75% (.0175).

Note: Agency will receive a separate invoice from the LDC (Local Distribution Company, also known as Local Utility Company)

5. Placement of Orders

Orders will be placed throughout the contract period on an as-needed basis for the quantity required at the time, and will be issued directly to the respective contractor(s) or their designated suppliers. Contract changes, if any, over the life of the contract are implemented by contract addenda released by the Contract Administrator to the contractor. If the contractor is accepting orders and/or delivering through other parties, for example a manufacturer accepting orders and delivering through a dealer network or dealers receiving orders through a network of other dealers, then it is the responsibility of the contractor to apprise such parties of all such contract addenda.

When ordering unleaded gasoline transport from this contract, please be aware pricing is updated **weekly**. The price will be that in effect at the **time of delivery, not the date the order is released**.

Optional Order Placement Via E-Procurement Steps:

Steps to Create Blanket Order:

- a. Click on tab marked "Non-Catalog"
- b. In the field titled "Full Description", type the following: "Transport Natural Gas per Term Contract 405N"
- c. In the field titled "Commodity Code" find and select the following code: "405-13" Natural Gas
- d. In the field titled "Supplier" type in the marketer name (i.e. Texican Natural Gas Company)
- e. In the field titled "Quantity" type in the total marketer dollar amount. Quantity X Price equals the \$ amount of the blanket order. The LDC (Local Distribution Company) also known as Local Utility Company, will submit a separate invoice.
- f. In the field titled "Unit of Measure", find and select the following unit of measure: "Dollar" (DOL)
- g. In the field titled "Price" type \$1.00
- h. Click "Add Item" and then click "Edit"
- i. On the drop down box next to "Contract?" select "Statewide"
- j. Enter your Term contract ID Number into the "Contract ID" field. Do not use spaces or dashes in the Term Contract ID Number. Your Term Contract Number should be entered as follows: 405N
- k. Set the "Blanket Order" tag to "Yes"
- l. Click "OK" and continue with the order placement process.

Steps to Release Blanket Order:

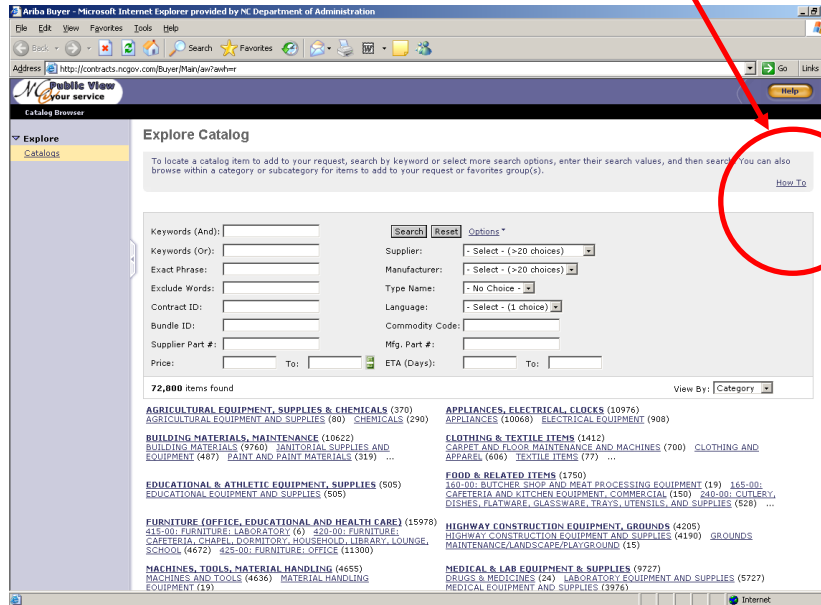
- When an invoice is received from the marketer, validate the pricing charged (against the nomination form). If the invoice amount is correct, log into E-Procurement and receive/approve the goods.

*** Note: All applicable taxes shall be included in the Tax Amount Field referenced on the requisition. ***

Non E-Procurement Users

The E-Procurement Public View will be the only place for Non E-Procurement Users to view the item/pricing information.

- Click on the following link: [E-Procurement Public View](#)
- For online assistance regarding item searching; click on the “How to” underlined link located near the upper-right hand corner.



6. Contractors

All known minority, women and disabled owned businesses, as well as disabled business enterprises and nonprofit work centers for the blind and severely disabled, including dealers, will be identified with "Minority Owned", "Woman Owned", "Disabled Owned", "DBE" or "BSD" as appropriate after the vendor number. This is being done in an effort to recognize these businesses and to encourage and promote their use to the greatest extent permitted by law.

When more than one supplier is listed for a particular item, selection should be made, whenever possible, from any of the groups identified above, consistent with agency needs and price considerations.

Contractor Name	Address	Contact Information
Texican Horizon Energy Marketing LLC	7301 Carmel Executive Park Suite 316 Charlotte NC 28226	Aubrey Hilliard Business: (704) 544-7121 Cell: (704) 907-8542 Fax: (704) 544-6752 aub@horizonenergy.com In the Event of an Emergency, after Business Hours, or on Weekends/Holidays: Chris Koch Business: (704) 544-7123 Cell: (704) 905-8300 Home: (704) 544-5229 Fax: (704) 544-6752 chris@horizonenergy.com

In the event problems arise the ordering agency should contact the contractor listed above for resolution. If a satisfactory resolution cannot be reached the agency should complete the [Vendor Complaint Form](#), indicate Purchase & Contract action is required, attach all supporting documentation and forward the packet to the Division of Purchase and Contract. Furthermore, if you have contractor performance issues you would like the Contract Administrator to be aware of, but do not require action, complete the Vendor Complaint Form, check the 'Vendor Record Only' box (attach all supporting documentation) so this may be considered in the evaluation of future bids.

7. Procedure Manual

[Procedure Manual](#)

[PSNC Customer Authorization Form \(Appendix A\)](#)

[Sample Marketer \(Texican\) Invoice \(Appendix B\)](#)

[Sample Energy Summary Report \(Appendix C\)](#)

8. Contract Overview

Definitions: Except in those instances where the Invitation for Bid states another meaning, the following terms shall have the meanings as set forth below:

Agency – means the State of North Carolina facilities listed herein, and where applicable, any non-state entity which participates in this contract award.

Alternate Fuel – coal, propane, fuel oil, wood products

Alternate Transporting Pipeline(s) – the pipeline(s) which transport the gas to the LDC (city gate) when primary pipeline is unavailable.

Balancing – equalizing a shipper's receipt of gas into a pipeline with withdrawals out of a pipeline system. Balancing may be required daily, monthly or seasonally with penalties assessed for excessive transportation imbalance.

Basis Cost – **all costs** associated with the transportation of the natural gas to the LDC city gate including tariff charges, commodity transportation, capacity charges, marketer margin, shrinkage, fuel retention losses, GRI surcharge, Gross Receipts Tax (GRT), custom duties/charges and balancing. The basis cost does not include the commodity cost (natural gas).

Basis Differential – difference in the market value of natural gas at two separate physical locations at the same point in time. Used as a proxy for the market value of pipeline transportation between those two locations at that time.

Book Out – removing imbalances by "gas in kind" as per transporter's tariffs.

Broker or Marketer – one who offers natural gas for sale to end users.

Btu – British thermal unit. The quantity of heat required to raise temperature of one (1) pound of avoirdupois pure water from 57.5 degrees F (57.5°F) to 58.5 degrees F (58.5°F) at a constant pressure of 14.73 psia.

Burner Tip – consumption at end use customers billing meter.

Burner Tip Price – estimated all costs of gas to end user.

Capacity Assignment – process by which an entity that holds the rights and obligations to interstate and/or intrastate pipeline capacity transfers those rights and obligations to another entity.

Cash Out – paying cash for imbalances according to the provisions of transporter's tariffs.

CBA – Customer Balancing Aggregation

Ccf – one hundred (100) standard cubic feet of gas

CGA or PGA – Cost of Gas Adjustment or Purchased Gas Adjustment. The mechanism by which a LDC periodically adjusts its prices in order to compensate for changes in the gas acquisition costs.

City Gate – location at which natural gas ownership passes from one party to another (interstate or intrastate pipeline to LDC).

City Gate Price – includes the cost of natural gas plus the Basis Cost for delivery to the local distribution company.

Cogeneration – sequential production of electricity and useful thermal energy from the same energy source.

Contract – any contract award resulting from this Invitation for Bids.

Contractor – any bidder to whom a contract award has been made by the State.

Cubic Feet – most common unit of measure of gas volume. One (1) cubic foot roughly equals one thousand (1,000) Btu's.

Term Contract No. 405N

Curtailment – interruption of flowing natural gas supplies imposed by pipelines and LDC's as a result of the demand for service exceeding the capacity of the pipeline.

Day – the period of twenty-four (24) consecutive hours beginning at 10:00 a.m. EST on any calendar day and ending at 10:00 a.m. EST on the calendar day immediately following.

Dekatherm – one million (1,000,000) British thermal units, abbreviated 1 Dt or MMBtu, equal to 10 therms. Roughly 1 Mcf = 1 MMBtu = 1 Dt = 10 Ccf

Delivery Points – Metering Points (gas meters) located at the facility where gas is delivered and the State takes possession. A specific delivery point shall be designated in each purchase order for natural gas for each different site to which gas is supplied.

Distribution Rate – the transportation charge the LDC charges to distribute gas from its city gate to the end user. Does not include the cost of the gas. LDC will charge a distribution rate regardless of whether it owns and sells the actual gas.

Distribution System – any group of interconnected pipe and facilities operating at a hoop stress of less than 20% specified minimum yield strength which transports gas from a common source of supply or storage facility to a customer.

Excise Tax – North Carolina requires the LDC to collect and remit excise tax. Contact NC Department of Revenue at 919-733-2151 with questions concerning any relative taxes.

FERC – Federal Energy Regulatory Commission or any successor agency or body, including the Congress, which has authority to regulate the rates and services of interstate pipelines.

Firm Supply – service that anticipates no interruptions, except force majeure. Firm supply means primary firm, non-recallable primary delivery point capacity to the city gate and does not mean secondary firm supply. All natural gas specified herein as firm supply shall be primary firm supply.

FTS – Firm Transportation Service

Fuel Retainage Losses – charges for fuel retention due to gas used for "PRESSURE."

Fuel Retention Cost - costs associated with interstate and/or intrastate pipeline compensation for gas used for compressor fuel and/or line losses. Such costs are based on the allowable fuel retention percentages under applicable federal and/or state regulated tariffs.

Gas Meter – an instrument manufactured primarily for use in measuring, and indicating or recording the measurement of, the volume of gas that has moved through the instrument.

GRI – Gas Research Institute

Heating Value – the number of Btu's produced by the complete combustion, at a constant pressure, of the amount of gas that would occupy a volume of one (1) cubic foot at a temperature of 60 degrees F (60°F) if saturated with water vapor and at an absolute pressure of 14.73 psia and under standard gravitational force with air of the same temperature and pressure as the gas when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by combustion is condensed to the liquid state.

Henry Hub – in Louisiana where many interstate pipelines connect with each other. Physical delivery of gas can be taken at this site; however most deliveries are taken at other locations on a specific pipeline.

Interruptible Supply – service which may be interrupted with satisfactory justification such as interstate pipeline or LDC curtailment.

Interstate Pipeline – federally regulated company engaged in the business of transporting natural gas across state lines from producing regions to end use markets. Some of the interstate pipeline companies that serve the Southeast include: Transcontinental Gas Pipe Line Company (Transco), Southern Natural (Sonat), Tennessee Gas Pipeline, East Tennessee Natural Gas, and Texas Gas Transmission. Interstate pipeline companies do not own or charge for the gas, but only for the transportation of gas through their pipeline. The charge of transportation is referred to as "transportation costs" or "estimated interstate basis".

Intrastate Pipeline – a company engaged in the business of transporting natural gas within the state which does not own or charge for the gas commodity, but only for the transportation of gas through its pipeline. Cardinal Pipeline Company, LLC is an example of an intrastate that operates solely in the state, and not crossing state lines. The charge of transportation is referred to as "transportation costs".

Interstate Transportation Costs (Interstate Basis) – the transportation cost charged by interstate pipeline companies to use their pipeline to transport gas. Comprised of demand or reservation fees, pipeline commodity charges, fuel shrinkage from compressors pumping gas to market, costs to get gas from the Henry Hub to pipelines' pooling points and other charges.

Inspector – person designated by the utility vested with the authority to initiate action to assure compliance with the adopted codes.

ITS – Interruptible Transportation Service

LDC – Local Distribution Company, also known as Local Utility Company, which transports gas from the City Gate to meter at agency.

LDC COST (i.e. Local Utility Company): All costs associated with the transportation of the natural gas from the city gate to the burnertip.

Term Contract No. 405N

Line Loss – the reduction in quantity of natural gas that results from leaks, venting, and other physical circumstances on a pipeline system.

LNG – Liquefied Natural Gas. Natural gas converted to a liquid state, usually for storage purposes, by pressure and severe cooling.

Load Factor – ratio of the average amount of gas a customer takes to the peak amount of gas a customer takes in a given period.

Low Pressure Distribution System – a gas distribution piping system or portion thereof which supplies gas to more than 10 customers through a common pressure reducing device(s) at a pressure substantially the same as the pressure provided to the customer.

MBtu – one thousand (1,000) Btu's

Mcf – the quantity of gas occupying a volume of one thousand (1,000) standard cubic feet of gas at a temperature of 60 degrees F (60°F) and pressure of 14.73 psia.

MMBtu's – one million British Thermal Units, also known as a dekatherm (Dt)

Main – distribution pipeline that serves as a common source of supply for more than one service line.

Master Meter System – a pipe system that receives gas through a gas meter and transports that gas to or for the public, with the gas being delivered through another gas meter prior to consumption.

Month – a period beginning at 10:00 a.m. EST on the first day of a calendar month and ending at 10:00 a.m. EST on the first day of the calendar month immediately following.

Natural Gas – a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface and used as a fuel. Produced from gas wells, or in association with oil (casing head) and/or residue gas resulting from processing either casing head gas and gas well gas, or both, of the quality specified herein.

Natural Gas Transmission Company – any person owning or operating for compensation, facilities for the transmission or delivery for sale of natural gas, but shall not include any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. s.717, et seq., or any municipalities or any agency thereof or a special district created by special act to distribute natural gas.

NYMEX – New York Mercantile Exchange. The commodity exchange based in New York where natural gas futures contracts and other energy futures are traded.

NYMEX Deadline – 12:00 p.m. CT of the last trading Day of a NYMEX Gas futures contract for the applicable delivery month.

NYMEX Price – the commodity price of natural gas. Sometimes referred to as the Henry Hub price because physical delivery of gas can be taken at the Henry Hub in Louisiana where many interstate pipelines connect with each other. However, most of the time, physical delivery is taken at other locations on a specific pipeline.

Off Peak – period of year when minimum demand for fuel occurs, typically April through October.

On Peak – period of year when maximum demand for fuel occurs, typically November through March.

Pack Orders – deliver more gas than the nominated volume when requested by a transporter.

Pipeline – all parts of physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies. Pipeline for the purposes of these rules, unless stated otherwise, includes mains and service lines.

Pipeline Capacity – service provided by a pipeline for a fixed monthly reservation charge which gives a transporter the right to move up to a maximum daily quantity of gas between defined points on the pipeline's system.

Primary Point of Delivery – the point where the gas enters the LDC (City Gate).

Primary Pipeline – the pipeline(s) which transports the gas to the LDC (City Gate).

Psia – pounds per square inch absolute

Rate – every compensation, tariff, charge, fare, toll, rental, and classification, or any of them, demanded, observed, charged, or collected whether directly or indirectly by any natural gas transmission company for any service relating to the transmission or sale of natural gas, and any rules, regulations, practices, terms and conditions, or contracts relating to any such transmission or sales service.

Rate Class – type of billing classification or category.

Receipt point – point which contractor delivers gas to a transporter.

Regulated Segment – section of the gas transport system, which is under the jurisdiction of FERC and/or North Carolina Utilities Commission.

Replacement Price Differential – the positive difference, if any, obtained by subtracting the lesser of (a) the price obtained by Contractor in an incremental, armslength sale(s) to a third party of the Fixed Price Quantity, less incremental transportation charges to Contractor, including location or basis adjustments, or (b) the Spot Price from the Fixed Price for the day on which the Fixed Price Deficiency Default occurred.

Term Contract No. 405N

Service Line – distribution pipeline that transports gas from a common source of supply to a gas meter prior to consumption.

Shrinkage – reduction in volume of wet natural gas due to removal of natural gas liquids, hydrogen sulfide, carbon dioxide, water vapor, and other impurities.

Spot Gas – interruptible or best efforts gas for specified volumes on a limited, usually monthly, basis.

Spot Price – the ‘Daily Midpoint’ price set forth in Gas Daily in the column “Daily Price Survey” under the listing applicable to the Delivery Point geographic location for the particular day on which a Fixed Price Deficiency Default occurs.

Standard Cubic Foot – gas volume of one (1) cubic foot measured at an absolute pressure of 14.73 Psia and temperature of 60 degrees F (60°F).

State – The State of North Carolina and its agencies.

STBA – Supplier Transportation Balancing and Aggregation.

Tariff – compilation of all the effective rate schedules for a company, along with general terms and conditions.

Taxes – Contact NC Department of Revenue at 919-733-2151 with questions concerning any relative taxes.

Telemetering – electronic remote metering

Trading Day – any day for which a NYMEX Gas futures contract is determinable.

Therm – one hundred thousand (100,000) Btu. Unit of measure of heat content.

Transportation Gas – third party owned gas delivered on the interstate pipeline system to a LDC on behalf of a customer.

Transportation Pipelines – transmission lines that transport gas to the LDC’s city gate.

Unbundling – separating costs on a pipeline or distribution system and charging customers for each component (commodity, transportation, storage).

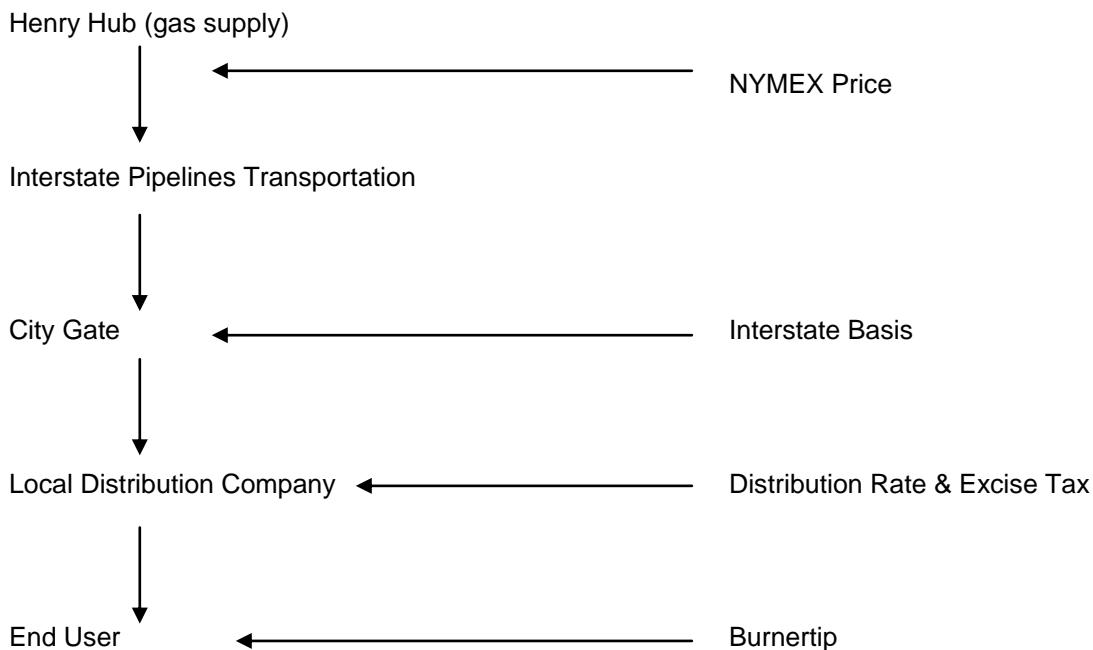
Utility or Operator – except where a different meaning clearly appears from the context, the word “utility” or “operator” shall be every person, corporation, partnership, association, public agency, municipality, cooperative gas district or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing or controlling any gas transmission or distribution facility transporting gas as defined herein and not specifically exempt from state jurisdiction by the Natural Gas Pipeline Safety Act of 1968, Public Law 90-481.

WACOG – Weighted Average Cost of Gas

Wellhead – placed on top of natural gas well sites to control flow and pressure.

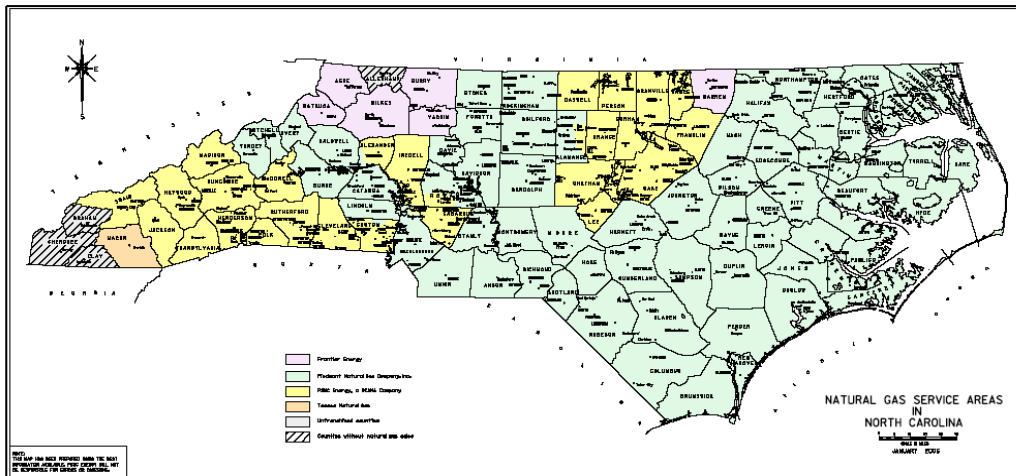
Wellhead Price – may also be referred to as supply price, commodity price, index price, NYMEX price or pooling price.

Schematic:



Natural Gas Service Areas in North Carolina:

<http://www.pubstaff.commerce.state.nc.us/psngas/companies/franchmap>



Disaster/Emergency: In the event a disaster/emergency is declared by Executive Order, or that the State Purchasing Officer determines pursuant to his/her authority under Title 1, Chapter 5 of the North Carolina Administrative Code that an emergency exists requiring the prompt and immediate delivery of natural gas, the agency reserves the right to obtain natural gas from any source, including but not limited to this contract. Contractor shall not be entitled to any claim or lost profits for natural gas procured from other sources pursuant to this paragraph.

Title Transfer: The State of North Carolina takes title at the city gate sales point. Notwithstanding transfer of title to the State at the sales point(s), contractor shall be the State's agent to exercise control of the gas being delivered until gas has been delivered by the LDC to the customer's account meter. Contractor shall be responsible for the coordination and scheduling of transportation volumes including completing all arrangements for transportation services for delivery of the natural gas to existing meter at each agency.

Title Warranty: Contractor warrants title to all natural gas delivered by it and warrants that it has the right to sell the same and that such natural gas is free from liens and adverse claims of every kind. Contractor shall indemnify and save the State harmless against all loss, damage and expense of every kind on account of adverse claims which accrue before delivery to the State.

NC Utilities Commission Rules and Regulations: The contractor shall abide by the North Carolina Utilities Commission rules and regulations for all natural gas transactions and practices under this contract. North Carolina Utilities Commission information can be downloaded from <http://www.ncuc.commerce.state.nc.us/>.

Natural Gas Quantity: Subject to the terms and conditions of this contract, the contractor agrees to deliver to agencies their monthly requirements, and agencies agree to provide contractor monthly nominations for anticipated quantities of natural gas. (Delivery Schedule reflects estimated quantities only.) Agency will be billed for actual quantity consumed.

The sale and delivery of gas by contractor shall be on a firm basis.

Nominations: Agency shall notify the contractor by email or fax not less than five (5) calendar days before the first day of each delivery of the estimated monthly and/or daily gas nomination. If agreed to by the contractor, nominations may be submitted to contractor at a later date. Contractor shall take no formal action to supply gas unless a nomination has been received. Contractor should ensure the using agency submits a nomination each month, even if the nomination is zero. If applicable, contractor shall be responsible for notifying Agency of any mid-month adjustments to agency nomination. If nominations are not timely, the contractor may contact the Division of Purchase and Contract for assistance. The nomination form shall be comparable to the one on Attachment B – Sample Nomination Form. There shall be no vendor terms and conditions referenced on the nomination form. The State's terms and conditions incorporated herein shall be the only terms of the resulting contract.

Agency shall pay for the actual volume of gas consumed at each individual metering location, subject to the below Force Majeure clause.

Term Contract No. 405N

Force Majeure: Curtailment/Interruption of one or more pipelines will not be considered a force majeure situation. Except for the State's obligations to make payment for gas delivered hereunder, neither party hereto shall be liable for any failure to perform the terms of the contract when such failure is due to "force majeure" as hereinafter defined. The term "force majeure" as employed in this specification shall mean acts of God, strikes, lockouts, or industrial dispute or disturbances, civil disturbances, arrests and restraints from rulers or people, interruption by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, inability to secure or a delay in securing labor or materials, including delay in securing or inability to secure materials by reason of allocations promulgated by authorized governmental agencies, epidemics, landslides, lighting, earthquakes, fires, storms, floods, washouts, explosions, breakage or freezing of pipelines, inability to obtain easements or rights-of-way, the making of repairs or alterations to lines of pipe or plants, mechanical breakdown of either parties' facilities, the failure of any local distributing company to accept gas for delivery for any reason, force majeure of any third party, partial or entire failure of gas supply or any other cause, whether the kind enumerated above or otherwise so long as the causes are not reasonably within the control of the party claiming "force majeure". The "force majeure" shall, so far as possible, be remedied with a reasonable dispatch. The settlement of strikes or lockouts or industrial disputes or disturbance shall be entirely within the discretion of the party having the difficulty and the above requirement that any "force majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts, or individual disputes or disturbances by acceding to the demands of any opposing party therein when such course is inadvisable in the discretion of the parties having the difficulty.

For purposes of this clause "force majeure" which interferes with the State's ability to use natural gas shall be deemed to occur no later than twelve (12) hours after receipt of notification thereof by the State.

In the event (i) a transaction has a firm obligation, and (ii) Contractor is unable to sell and deliver the quantity for such transaction as a result of an event of force majeure or an Agency is unable to purchase and receive the quantity for such transaction as a result of an event of force majeure, and (iii) the delivery period for such transaction is at least one calendar month, and (iv) the City Gate Price is a Fixed Price (as defined below), then (a) if the FOM Price (as defined below) is above the Fixed Price, Contractor shall pay the Agency for each MMBtu of gas not delivered and/or received the difference between the FOM Price and the Fixed Price, or (b) if the FOM Price is below the Fixed Price, the Agency shall pay Contractor for each MMBtu of gas not delivered and/or received the difference between the Fixed Price and the FOM Price. "Fixed Price" means a City Gate Price for a transaction that is expressed as a flat dollar amount as a result of an Agency entering into a futures transaction that resulted in a fixed price for some or all of the Agency's monthly requirements. "FOM Price" means the price per MMBtu for the first of the month delivery, as published in the first issue of a publication commonly-accepted by the natural gas industry (selected by the Contractor in a commercially reasonable manner) for the calendar month of such force majeure event for Transco Zone 5 delivery.

Balancing: The Contractor is responsible for all supply/demand balancing for the agencies under the contract. This is a full requirements bid. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected transporter (s). Each party shall give the other party timely prior notice, sufficient to meet the requirements of all transporter(s) involved in the transaction, of the quantities of gas to be delivered and purchased. Should either party become aware that the actual deliveries at the delivery point are greater or lesser than the scheduled gas, such party shall promptly notify the other party.

Transportation Charges: The contractor shall pay all costs associated with the transportation of the gas to the LDC city gate. The State (i.e. ordering agency) shall enter into a separate agreement with the LDC and pay all costs associated with the transportation of gas from the LDC city gate to the existing meter at each agency. An Agency shall provide any LDC, required forms to give the Contractor authorization to act on the agency's behalf.

Curtailments/Interruptions: Curtailment is defined as interruption of flowing natural gas supplies imposed by pipelines and LDC's as a result of the demand for service exceeding the capacity of the pipeline. If an agency nominates gas, and the LDC and any available pipeline is flowing supply, contractors are expected to supply gas for the entire month and end user is required to buy gas for the entire month. The State agrees to be interrupted only when contractor can provide satisfactory justification of curtailments or interruptions that occur on pipelines or at the LDC level, as a result of demand for supply exceeding capacity. Where firm supply is specified, contractor is expected to deliver natural gas at all times. Note firm supply means primary firm non-recallable primary delivery point capacity to the city gate and not secondary firm supply.

Term Contract No. 405N

Contractor shall notify the agency of impending interruptions immediately by telephone and shall follow up with written notification sent by email or facsimile. Should curtailment/interruption occur, the contractor shall provide to the agency satisfactory written justification, including documentation from the pipeline or LDC which clearly describes details of the curtailment/interruption and should indicate the name, number and location of the station where curtailment takes place. Failure to provide the agency written justification within twenty-four (24) hours of pipeline curtailment may be sufficient justification for the agency to apply a charge-back penalty, which shall be the difference between this contract's natural gas price versus the open market purchase price of replacement gas or the utility supplied price, including any LDC imposed penalties.

Contractor shall notify the agency, and LDC if applicable, of resumption of service immediately by telephone and shall follow up with written notification sent by email or facsimile. Agency written notification shall indicate the date/time of the interruption, date/time full flow was resumed and the volumetric impact of the interruption on the agency's nomination. Contractor will be liable for any penalties caused by contractor's failure to inform the agency, and LDC if applicable, within twelve (12) hours of resumption of service.

Billing: Contractor shall provide the agency a statement showing the quantity of gas delivered during the preceding month. The bill shall contain, but not be limited to:

- Quantity of gas nominated by the agency
- Quantity of gas delivered to the city gate
- Cost of gas per dekatherm delivered to the city gate
- Adjustments made (balancing)
- Indicate if a separate invoice will be issued by the LDC (city gate to burnertip). If applicable the contractor should offer the agency the option to receive combined marketer / LDC bills.
- Final total bill to be paid

Refund: The State will be entitled to a refund of any substantiated overcharge discovered as allowable by law **within five (5) years** after the billing date. Such refunds shall be made or credited **within thirty (30) days** after receipt of a claim and shall bear interest (from the date of erroneous payment) at the rate specified by the State.

9. Contract Addenda

Addendum	Effective Date	Description
1	2/1/2011	Basis Cost increase to \$0.99/Dt